

LAI D ON DESKS 9/11/17
LAI D ON DESKS BY MAIL, EMAILED, AND PLACED IN BOXES 9/27/17
GOVERNMENT SERVICES & ADMINISTRATION

RESOLUTION NO. 2017180

RE: LOCAL LAW NO. ____ OF 2017, A LOCAL LAW
PROHIBITING THE USE OF POLYSTYRENE FOAM
DISPOSABLE FOOD SERVICE WARE

Legislators PULVER, RIESER, SAGLIANO, HORTON, TYNER, and TRUITT
offer the following and move its adoption:

RESOLVED, that the Legislature of the County of Dutchess adopt Local Law No.
_____ of 2017 which has been submitted this day for consideration by said Legislature.

CA-108-17
CRC/kvh/G-1717-B
08/31/17

Fiscal Impact: None

STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with
the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 10th day of October 2017, and that the
same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 10th day of October 2017.

CAROLYN MORRIS, CLERK OF THE LEGISLATURE

LOCAL LAW NO. ____ of 2017

RE: LOCAL LAW NO. ____ OF 2017, A LOCAL LAW
PROHIBITING THE USE OF POLYSTYRENE FOAM
DISPOSABLE FOOD SERVICE WARE

BE IT ENACTED, by the County Legislature of the County of Dutchess, New York, as follows:

Section 1. LEGISLATIVE INTENT.

Polystyrene **foam**, commonly referred to as Styrofoam, is a petroleum-based plastic made from the styrene monomer. Styrene has been identified as a potential human carcinogen by the United States Department of Health and Human Services and the International Agency for Research of Cancer.ⁱ The Environmental Protection Agency (EPA), Food and Drug Administration (FDA), and Occupational Safety and Health Administration (OSHA) have all set styrene exposure levels (EPA – drinking water, FDA – bottled water, and OSHA – workplace air).ⁱⁱ

Polystyrene **foam** is used in a number of common food container products. The substance has historically been difficult and costly to recycle on top of being poorly biodegradable.^{iii iv} Most of the polystyrene **foam** that ends up in landfills will be there 500 years from now. Polystyrene **foam** can also be very toxic when burned.^v

It is often found among common litter or in landfills. Because of the nature and ubiquity of polystyrene **foam**, it can threaten animal and human health.

It is for these reasons that Dutchess County seeks to ban the use of disposable food service ware containing polystyrene foam by chain food service establishments.

i <https://www.atsdr.cdc.gov/phs/phs.asp?id=419&tid=74>

ii <https://www.atsdr.cdc.gov/phs/phs.asp?id=419&tid=74>

iii http://thecif.ca/pdf/reports/130/130_report.pdf

iv <http://www.seas.columbia.edu/earth/wtert/sofos/nawtec/1992-National-Waste-Processing-Conference/1992-National-Waste-Processing-Conference-35.pdf>

v <http://sciencing.com/styrofoam-biodegradable-22340.html>

Section 2. PROHIBITION ON THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE.

- A. No Chain Food Service Establishment shall sell, package, or distribute prepared food in any disposable food service ware that contains polystyrene foam.
- B. The use of all disposable food service containers containing expanded polystyrene foam for sale, packaging or distribution of food at all county facilities, parks, or events is strictly prohibited.

Section 3. COMMISSIONER OF BEHAVIORAL AND COMMUNITY HEALTH'S AUTHORITY.

The responsibility of the administration and enforcement of this Local Law shall be with the Dutchess County Department of Behavioral and Community Health. The Commissioner of Behavioral and Community Health shall be vested with the power to promulgate rules and regulations consistent with this Local Law. Rules and Regulations are submitted herewith for adoption by local law. Any rules and regulations so promulgated shall be made available on the County of Dutchess' website in a manner approved by the Commissioner.

Section 4. REVERSE PREEMPTION.

This local law shall be null and void on the day that federal or New York State general legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent federal or state administrative agency issues and promulgates regulations preempting such action by the County of Dutchess. The County Legislature may determine via mere resolution whether or not identical or substantially similar federal or statewide legislation, or pertinent preempting state or federal regulations have been enacted for the purposes of triggering the provisions of this section.

Section 5. SEVERABILITY.

If any clause, sentence, paragraph, section, subdivision, or other part of this local law or its application shall be inconsistent with any federal or state statute, law, regulation or rule then the federal or state statute, law, regulation, or rule shall prevail. If any clause, sentence, paragraph, section, subdivision, or other part of this local law or its application shall be adjudged by a court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder of the local law which shall remain in full force and effect except as limited by such order or judgment.

Section 6. SEQRA DETERMINATION.

It is hereby determined, pursuant to the provisions of the State Environmental Quality Review Act, 8 NYECL Section 0101 et seq., and its implementing regulations, Part 617 of 6 NYCRR, that the adoption of this local law is a "Type II" Action within the meaning of Section 617.5(c)(20) and (27) of 6 NYCRR, and, accordingly, is of a class of actions which do not have a significant impact on the environment and no further review is required." [6 NYCRR Section 617.5(c) (20) and (27) apply to: "(20) routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the

environment” and “(27) adoption of regulations, policies, procedures and local legislative decisions in connection with any action on this list”]

Section 7. EFFECTIVE DATE AND APPLICABILITY.

This local law shall be effective immediately upon filing in the Office of the Secretary of State and shall apply to all transactions occurring on or after the effective date of this local law. Enforcement shall not commence until January 1, 2019.

DUTCHESS COUNTY DEPARTMENT OF COMMUNITY AND BEHAVIORAL HEALTH - POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE RULES AND REGULATIONS

Section 1. DEFINITIONS.

The terms set forth below shall have the following meanings:

- A. "Chain Food Service Establishment" - Any establishment operating in Dutchess County that sells or otherwise provides Prepared Food for public consumption on, or off its premises and is part of a group of fifteen or more locations nationally, doing business under the same trade name.
- B. "Customer(s)" - Any person(s) obtaining Prepared Food from a Chain Food Service Establishment.
- C. "Disposable Food Service Ware" - All bowls, plates, cartons, cups, other containers, trays, or other items designed for one-time use on or in which any Food Service Establishment directly places and/or packages food or provides same to Customer(s) to place and/or package food or which are used by Customer(s) to consume or transport food. This includes, but is not limited to, service ware for takeout Prepared Food and/or leftovers from partially consumed meals prepared at or by Chain Food Service Establishments for consumption at a specific location. Excluded from this law and not included are single-use disposable items such as straws, cup lids, or utensils.
- D. "Commissioner" - The Dutchess County Commissioner of the Department of Behavioral and Community Health.
- E. "County" - The County of Dutchess.
- F. "Polystyrene foam" - Any blown polystyrene, expanded, and extruded foams (commonly referred to as Styrofoam, a Dow Chemical Company trademarked form of polystyrene foam insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques, including, but not limited to, fusion of polymer spheres (expandable bead polystyrene foam), injection molding, foam molding, and extrusion blow molding (extruded from polystyrene). Polystyrene foam is generally used to make cups, bowls, plates, trays, meat trays and egg cartons.

- G. "Prepared Food" - Any food or beverage which is (1) served in Dutchess County or (2) which is packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared on the premises. Prepared Food does not include raw meats, eggs, poultry and/or seafood sold for the purpose of cooking off premises.

Section 2. EXEMPTIONS.

A Chain Food Service Establishment may seek an exemption from the prohibition under Section 2 of the local law due to a "unique packaging hardship" under Subsection A of this Section or a "financial hardship" under Subsection B of this Section.

- A. The Chain Food Service Establishment must demonstrate that no reasonably feasible alternative exists to a specific and necessary polystyrene foam disposable food service ware to qualify for a "unique packaging hardship" exemption.
- B. The Chain Food Service Establishment must demonstrate both of the following to qualify for a "financial hardship" exemption: (1) a gross income under \$500,000 on their annual income tax filing for the most recent tax year, and (2) with respect to each specific and necessary Polystyrene foam Disposable Food Service Ware, that there is no feasible alternative that would cost the same or less than the Polystyrene foam Disposable Food Service Ware.
- C. The Chain Food Service Establishment may submit a written application for an exemption on a form provided by the Department of Behavioral and Community Health. The Commissioner or his/her designee may require the applicant to submit additional information: or documentation to make a determination regarding the exemption request. Within thirty (30) days of receiving a completed application and supporting documentation, if any, the Commissioner must either grant or deny the applicant's request for an exemption and must notify the applicant of his or her determination. A request for exemption shall be reviewed on a case by case basis, and may be granted in whole or in part, with or without conditions, for a period of up to twelve (12) months. The Chain Food Service Establishment must apply for a new exemption period no later than sixty (60) days prior to the expiration of the then current exemption period to preserve a continuous exemption status. Each application shall be reviewed anew and will be based on the most current information available. The determination of the Commissioner shall be final and is not subject to appeal.

Section 3. PENALTIES.

Violations of this local law shall be enforced as follows:

- A. For the first violation, the Commissioner, or his or her designee, upon a determination that a violation of this local law has occurred, shall issue a written warning notice to the Chain Food Service Establishment which will specify the violation and the appropriate penalties in the event of future violations.
- B. Thereafter, the following penalties shall apply:

1. First Offense. Any Chain Food Service Establishment guilty of a first offense shall be guilty of a violation and shall be fined an amount not to exceed two hundred and fifty (\$250) dollars.
2. Second Offense. Any Chain Food Service Establishment guilty of a second offense shall be guilty of a violation and shall be fined an amount not to exceed five hundred (\$500) dollars.
3. Third and Subsequent Offense. Any Chain Food Service Establishment guilty of a third or subsequent offense shall be guilty of a violation and shall be fined an amount not to exceed one thousand (\$1,000) dollars.

ⁱ <https://www.atsdr.cdc.gov/phs/phs.asp?id=419&tid=74>

ⁱⁱ <https://www.atsdr.cdc.gov/phs/phs.asp?id=419&tid=74>

ⁱⁱⁱ http://thecif.ca/pdf/reports/130/130_report.pdf

^{iv} <http://www.seas.columbia.edu/earth/wtert/sofos/nawtec/1992-National-Waste-Processing-Conference/1992-National-Waste-Processing-Conference-35.pdf>

^v <http://sciencing.com/styrofoam-biodegradable-22340.html>

FISCAL IMPACT STATEMENT

☒ NO FISCAL IMPACT PROJECTED

APPROPRIATION RESOLUTIONS

(To be completed by requesting department)

Total Current Year Cost \$ _____

Total Current Year Revenue \$ _____
and Source

Source of County Funds *(check one)*: ☐ Existing Appropriations, ☐ Contingency,
☐ Transfer of Existing Appropriations, ☐ Additional Appropriations, ☒ Other *(explain)*.

Identify Line Items(s):

Related Expenses: Amount \$ _____

Nature/Reason:

Anticipated Savings to County: _____

Net County Cost (this year): _____
Over Five Years: _____

Additional Comments/Explanation:

The Department of Behavioral and Community Health will perform the enforcement function of this legislation within their current inspection and complaint processes and policies. There will not be the need for additional staff resources or other related costs.

Prepared by: Jessica White, Budget Director

Prepared On: 8/28/2017

SUMMARY

Provides that no chain food service establishment, which is defined as any establishment operating in Dutchess County that is part of a group of 15 or more locations nationwide, shall sell, package, or distribute prepared food in any disposable food service ware that contains polystyrene foam. Further, prohibits the use of all disposable food service containers containing polystyrene foam for sale, packaging, or distribution of food at all county facilities, parks, or events.

The Commissioner of the Department of Behavioral and Community Health (DBCH) shall have the authority to administer and enforce this ban. DBCH shall be responsible for issuing written warnings, levying fines on violators, and granting/denying exemption applications. The first violation by a chain food service establishment shall result in a written warning notice that specifies the penalties in the event of future violations. The Commissioner may levy fines no greater than \$250 for the first offense, \$500 for the second offense, and \$1000 for the third and subsequent offense(s).

The local law shall take effect immediately, but enforcement shall not commence until January 1, 2019.

JUSTIFICATION

Polystyrene, commonly referred to as Styrofoam, is a petroleum-based plastic made from the styrene monomer. Styrene has been identified as a potential human carcinogen by the Department of Health and Human Services and the International Agency for Research of Cancer.ⁱ The Environmental Protection Agency (EPA), Food and Drug Administration (FDA), and Occupational Safety and Health Administration (OSHA) have all set styrene exposure levels (EPA – drinking water, FDA – bottled water, and OSHA – workplace air).ⁱⁱ

Polystyrene is used in a number of common food container products. The substance is difficult and costly to recycle on top of being poorly biodegradable.ⁱⁱⁱ ^{iv} It is often found among common litter or in landfills. Because of the nature and ubiquity of polystyrene, it can threaten animal and human health.

It is for these reasons that Dutchess County seeks to ban the use of disposable food service ware containing polystyrene foam by chain food service establishments.

SUPPORT

In the past, Riverkeeper has supported local bans on the use of polystyrene based food containers. Other environmental advocacy groups would also be likely to support the ban. When the Albany County Legislature was debating banning the use of polystyrene, the League of Women Voters offered their support for banning the use of polystyrene based food containers.

OPPOSITION

The New York State Restaurant Association, DART Container Corporation, and KFC have been vocal opponents of polystyrene based food containers bans. DART and KFC were outspoken opponents of Ulster County's ban.

ⁱ <https://www.atsdr.cdc.gov/phs/phs.asp?id=419&tid=74>

ⁱⁱ <https://www.atsdr.cdc.gov/phs/phs.asp?id=419&tid=74>

ⁱⁱⁱ http://thecif.ca/pdf/reports/130/130_report.pdf

^{iv} <http://www.seas.columbia.edu/earth/wtert/sofos/nawtec/1992-National-Waste-Processing-Conference/1992-National-Waste-Processing-Conference-35.pdf>

Background for 2017180

Wager, Leigh

From: Morris, Carolyn on behalf of CountyLegislature
Sent: Thursday, October 05, 2017 9:40 AM
To: CountyLegislature
Cc: Wager, Leigh
Subject: FW: Resolution No. 2017180

Carolyn Morris

Clerk

Dutchess County Legislature

845.486.2100

From: Steve MacAvery [<mailto:smacavery2@live.com>]
Sent: Wednesday, October 04, 2017 10:24 PM
To: CountyLegislature
Subject: Resolution No. 2017180

The Dutchess County Environmental Management Council (DCEEMC) has reviewed Resolution No. 2017180, Prohibiting the Use of Polystyrene Foam Disposable Food Service Ware, and supports the adoption of Resolution No. 2017180.

Steve MacAvery
Chair, Dutchess County Environmental Management Council

Sent from Mail for Windows 10